IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

MFA.No. 870 of 1996()

IC.36/1994 of ESI COURT,IDUKKI DATED 23-4-1996

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APPELLANT:

E.S.I CORPORATION REPRESENTED BY
ITS REGIONAL DIRECTOR, THRISSUR

BY ADV. SMT.T.D.RAJALAKSHMI

RESPONDENT:

SHRI. MATHEW THOMAS,
KALEKKANMALA HOUSE
CHITTOOR POST, THIRUVALLA

BY ADV. SRI.P.R.VENKETESH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A No.870 of 1996

Dated this the 25th day of September 2007

JUDGMENT

Employees State Insurance Corporation, the opposite party in I.C No. 36 of 1994 is the appellant . The appeal is filed against an order passed by the Employees State Insurance Court Idukki allowing an application filed by the respondent under Section 75 r/w 77 of the E.S.I Act. The respondent was running an establishment which was covered under the provisions of the E.S.I.Act till 22-8-1980. Subsequently the establishment was closed with effect from 23-8-1980. So the establishment was excluded from the purview of coverage. On 4-1-1990 the Insurance Inspector visited the establishment. He found that the establishment started functioning with effect from 22-3-1987. He filed Ext.B1 report in which it was stated that on 25-9-1989 and during the period from 30-9-1989 to 13-10-1989, there was 10 employees were working in the establishment. Relying on Ext.B1 report the appellant demanded contribution. The respondent did not pay the same. Action under Section 45 A was initiated and C18 notice was issued. The respondent filed an application before the Insurance Court to quash that notice and further proceedings. The respondent contended that at no point of time the respondent employed 9 or more persons in the establishment. On 25-5-1989 actually 8 employees worked in the establishment but the names of

10 employees had been shown in the wages register. The insurance Court found that the actual number of employees worked was less than 10. and allowed the application and quashed C18 notice. Challenging that order this appeal is filed.

2. An inspection was conducted on 4-1-1990. As per the inspection report on 25-9-1989 there were 10 employees. The definite stand taken by the respondent was that though names of the 10 persons were written in Ext.A1 wages register, on that day only 8 employees were there. A perusal of Ext.A1 shows that on 25-9-1989 only 8 employees worked even though the names of 10 employees were written in the wages register. It is true that in Ext. B1 report it is written that on 25-9-1989 the names of 10 employees were working on 25-5-1990 and during the period from 30-9-1989 to 13-10-1989.

3. AW1 is the respondent. He gave evidence to the effect that he had never employed more than 9 employees in his establishment and his establishment was closed during December 1990. He also deposed that , even though the names of 10 employees were recorded in Ext.A1 during the month of September 1989, only 9 employees had actually worked. and during the second week of October 1989, 3 employees had resigned and left. Afterwards only 8 employees were working in his establishment.

4. The Insurance Court accepted the contentions of the respondent and came to a conclusion that only less than 10 persons were employed in the establishment of the respondent Admittedly the Insurance Inspector who had inspected his factory had no direct information. He got the information only from the wages register. After perusing the entries the Insurance Court found that even though the names of 10 persons were recorded in Ext.A1 actually 9 employees had worked during the Month of September. 3 employees resigned and left during October. This is a finding of fact based on good evidence. No substantial question of law arises in this appeal There is no scope for interference and the appeal is only to be dismissed.

In the result, the appeal is dismissed.

K.PADMANABHAN NAIR,JUDGE

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